

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt  
Clerk

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Re: Case No. 19-2178, *Randy Montante v. USA*  
Originating Case No. 2:18-cv-12419, 2:16-cr-20576-1

Dear Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Monica M. Page  
Case Manager  
Direct Dial No. 513-564-7021

cc: Mr. David J. Weaver

Enclosure

No. 19-2178

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

RANDY NIBUNGCO MONTANTE,

Petitioner-Appellant,

V.

UNITED STATES OF AMERICA,

Respondent-Appellee.

**FILED**  
Dec 26, 2019  
DEBORAH S. HUNT, Clerk

O R D E R

Martin J. Beres, retained counsel for federal prisoner Randy Nibungco Montante, moves this court to appoint him as Montante’s counsel pursuant to the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A, in Montante’s appeal of the district court’s judgment denying his motion to vacate, set aside, or correct his sentence filed pursuant to 28 U.S.C. § 2255.

In 2017, Montante, who was then represented by attorneys within the federal public defender's office, pleaded guilty to production of child pornography, in violation of 18 U.S.C. § 2251(a). He was sentenced to 210 months in prison. Thereafter, Montante filed a motion to withdraw his guilty plea, which the district court denied.

Montante then retained Mr. Beres and filed a § 2255 motion to vacate, claiming that one of his federal public defense attorneys was ineffective. The district court denied the motion, finding that Montante failed to show that his attorney's performance was deficient. However, the district court granted Montante a certificate of appealability and leave to proceed in forma pauperis on appeal.

Mr. Beres remains Montante's counsel in the present appeal and moves this court to appoint him under the CJA.

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The CJA provides that counsel may be appointed to an individual seeking relief under § 2255 “[w]hen . . . the court determines that the interests of justice so require” and the individual is financially eligible. *See* 18 U.S.C. § 3006A(a)(2)(B).

Here, the interests of justice support appointing Mr. Beres as Montante’s counsel under the CJA in view of his familiarity with this case and Montante’s lack of legal training, knowledge, and competence to represent himself. And given that the district court granted Montante leave to proceed in forma pauperis on appeal, he has demonstrated that he is financially eligible for a CJA-appointed attorney.

Accordingly, the court **GRANTS** the motion for the appointment of counsel pursuant to the CJA.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk